

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1234**

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**Introduced by Assembly Member Levine**

February 22, 2013

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An act to amend Section ~~10234.93~~ 1215.8 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL’S DIGEST

AB 1234, as amended, Levine. Insurance: ~~long term care insurance.~~ *registration statements.*

*Existing law governs the business of insurance and authorizes the Insurance Commissioner to provide oversight over the insurance industry, including conducting investigations and bringing enforcement actions.*

*Existing law requires each insurer that is authorized to do business in this state and that is a member of an insurance holding company system to register with the commissioner and to file a registration statement containing specified information, including the capital structure and general financial condition of the insurer and specified transactions between the insurer and its affiliates.*

*Existing law makes the information reported to the commissioner in the registration statement and information disclosed in the course of an examination or investigation of the registration statement exempt from subpoena or public disclosure, except as specified.*

*This bill would provide that information reported to the commissioner in the registration statement and information disclosed in the course of an examination or investigation of the registration statement is not*

*subject to discovery or admissible into evidence in any private civil action.*

~~Existing law provides for the regulation of insurers by the Department of Insurance, including insurers issuing policies of long-term care insurance. Existing law regulates the marketing or solicitation of long-term care insurance policies and, in that regard, requires specified disclosures to prospective applicants or enrollees. Existing law requires an insurer of long-term care insurance to clearly post on its Internet Web site and provide written notice at the time of solicitation that a specimen individual policy form or group master policy and certificate form for each policy form offered by the insurer is available upon request and to provide that form within 15 calendar days upon request.~~

~~This bill would additionally require an insurer to clearly post on its Internet Web site, and include on its policy application, information about an Internet Web site provided by the Department of Health Care Services, known as [www.rureadyea.org](http://www.rureadyea.org).~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1215.8 of the Insurance Code is amended  
2     to read:  
3     1215.8. (a) All information, documents, and copies thereof  
4     obtained by or disclosed to the commissioner or any other person  
5     in the course of an examination or investigation made pursuant to  
6     Sections 1215.4 and 1215.5, and all information reported pursuant  
7     to Section 1215.4, shall be kept confidential, shall not be subject  
8     to disclosure pursuant to the California Public Records Act  
9     (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
10    Title 1 of the Government Code), ~~and~~ shall not be subject to  
11    subpoena, *and shall not be subject to discovery or admissible into*  
12    *evidence in any private civil action.* This information shall not be  
13    made public by the commissioner or any other person except to  
14    insurance departments of other states without the prior written  
15    consent of the insurance company to which it pertains, unless the  
16    commissioner, after giving the insurer and its affiliates who would  
17    be affected thereby notice and opportunity to be heard, determines  
18    that the interests of policyholders, shareholders, or the public will  
19    be served by the publication thereof, in which event he or she may

1 publish all or any part thereof in a manner as he or she may deem  
2 appropriate.

3 (b) In order to assist in the performance of the commissioner's  
4 duties, the commissioner:

5 (1) May, upon request, be required to share documents,  
6 materials, or other information, including the confidential and  
7 privileged documents, materials, or information subject to  
8 subdivision (a), with other state, federal, and international  
9 regulatory agencies, with the NAIC and its affiliates and  
10 subsidiaries, and with state, federal, and international law  
11 enforcement authorities, including members of any supervisory  
12 college described in Section 1215.7; provided that the recipient  
13 agrees in writing to maintain the confidentiality and privileged  
14 status of the documents, materials, or other information, and has  
15 verified in writing the legal authority to maintain confidentiality.

16 (2) Notwithstanding paragraph (1), the commissioner may only  
17 share confidential and privileged documents, materials, or  
18 information reported pursuant to subdivision (m) of Section 1215.4  
19 with commissioners of states having statutes or regulations  
20 substantially similar to subdivision (a) and who have agreed in  
21 writing not to disclose the information.

22 (3) May receive documents, materials, or information, including  
23 otherwise confidential and privileged documents, materials, or  
24 information, from the NAIC and its affiliates and subsidiaries and  
25 from regulatory and law enforcement officials of other foreign or  
26 domestic jurisdictions, and shall maintain as confidential or  
27 privileged any documents, materials, or information received with  
28 notice or the understanding that it is confidential or privileged  
29 under the laws of the jurisdiction that is the source of the  
30 documents, materials, or information.

31 (4) May enter into written agreements with the NAIC governing  
32 sharing and use of information provided pursuant to this  
33 subdivision consistent with this subdivision that shall do the  
34 following:

35 (A) Specify procedures and protocols regarding the  
36 confidentiality and security of information shared with the NAIC  
37 and its affiliates and subsidiaries pursuant to this subdivision,  
38 including procedures and protocols for sharing by the NAIC with  
39 other state, federal, or international regulators.

1 (B) Specify that ownership of information shared with the NAIC  
2 and its affiliates and subsidiaries pursuant to this subdivision  
3 remains with the commissioner and the NAIC's use of the  
4 information is subject to the direction of the commissioner.

5 (C) Require prompt notice to be given to an insurer whose  
6 confidential information in the possession of the NAIC pursuant  
7 to this subdivision is subject to a request or subpoena to the NAIC  
8 for disclosure or production.

9 (D) Require the NAIC and its affiliates and subsidiaries to  
10 consent to intervention by an insurer in any judicial or  
11 administrative action in which the NAIC and its affiliates and  
12 subsidiaries may be required to disclose confidential information  
13 about the insurer shared with the NAIC and its affiliates and  
14 subsidiaries pursuant to this subdivision.

15 (c) The sharing of information by the commissioner pursuant  
16 to this subdivision shall not constitute a delegation of regulatory  
17 authority or rulemaking, and the commissioner is solely responsible  
18 for the administration, execution, and enforcement of the provisions  
19 of this article.

20 (d) No waiver of any applicable privilege or claim of  
21 confidentiality in the documents, materials, or information shall  
22 occur as a result of disclosure to the commissioner under this  
23 section or as a result of sharing as authorized in subdivision (c).

24 (e) Documents, materials, or other information filed in the  
25 possession or control of the NAIC pursuant to this subdivision  
26 shall be confidential by law and privileged, shall not be subject to  
27 subpoena, and shall not be subject to discovery or admissible in  
28 evidence in any private civil action.

29 ~~SECTION 1. Section 10234.93 of the Insurance Code is~~  
30 ~~amended to read:~~

31 ~~10234.93. (a) Every insurer of long-term care in California~~  
32 ~~shall:~~

33 ~~(1) Establish marketing procedures to assure that any comparison~~  
34 ~~of policies by its agents or other producers will be fair and accurate.~~

35 ~~(2) Establish marketing procedures to assure excessive insurance~~  
36 ~~is not sold or issued.~~

37 ~~(3) Submit to the commissioner within six months of the~~  
38 ~~effective date of this act, a list of all agents or other insurer~~  
39 ~~representatives authorized to solicit individual consumers for the~~

1 ~~sale of long-term care insurance. These submissions shall be~~  
2 ~~updated at least semiannually.~~

3 ~~(4) Provide the following training and require that each agent~~  
4 ~~or other insurer representative authorized to solicit individual~~  
5 ~~consumers for the sale of long-term care insurance shall~~  
6 ~~satisfactorily complete the following training requirements that,~~  
7 ~~for resident licensees, shall count toward the licensee's continuing~~  
8 ~~education requirement, but may still result in completing more~~  
9 ~~than the minimum number of continuing education hours set forth~~  
10 ~~in this section:~~

11 ~~(A) For licensees issued a license after January 1, 1992, eight~~  
12 ~~hours of training in each of the first four 12-month periods~~  
13 ~~beginning from the date of original license issuance and thereafter~~  
14 ~~eight hours of training prior to each license renewal.~~

15 ~~(B) For licensees issued a license before January 1, 1992, eight~~  
16 ~~hours of training prior to each license renewal.~~

17 ~~(C) For nonresident licensees that are not otherwise subject to~~  
18 ~~the continuing education requirements set forth in Section 1749.3,~~  
19 ~~the evidence of training required by this section shall be filed with~~  
20 ~~and approved by the commissioner as provided in subdivision (g)~~  
21 ~~of Section 1749.4.~~

22 ~~Licensees shall complete the initial training requirements of this~~  
23 ~~section prior to being authorized to solicit individual consumers~~  
24 ~~for the sale of long-term care insurance.~~

25 ~~The training required by this section shall consist of topics related~~  
26 ~~to long-term care services and long-term care insurance, including,~~  
27 ~~but not limited to, California regulations and requirements,~~  
28 ~~available long-term care services and facilities, changes or~~  
29 ~~improvements in services or facilities, and alternatives to the~~  
30 ~~purchase of private long-term care insurance. On or before July~~  
31 ~~1, 1998, the following additional training topics shall be required:~~  
32 ~~differences in eligibility for benefits and tax treatment between~~  
33 ~~policies intended to be federally qualified and those not intended~~  
34 ~~to be federally qualified, the effect of inflation in eroding the value~~  
35 ~~of benefits and the importance of inflation protection, and NAIC~~  
36 ~~consumer suitability standards and guidelines.~~

37 ~~(5) Display prominently on page one of the policy or certificate~~  
38 ~~and the outline of coverage: "Notice to buyer: This policy may not~~  
39 ~~cover all of the costs associated with long-term care incurred by~~

1 the buyer during the period of coverage. The buyer is advised to  
2 review carefully all policy limitations.”

3 ~~(6) Inquire and otherwise make every reasonable effort to~~  
4 ~~identify whether a prospective applicant or enrollee for long-term~~  
5 ~~care insurance already has accident and sickness or long-term care~~  
6 ~~insurance and the types and amounts of any such insurance.~~

7 ~~(7) Every insurer or entity marketing long-term care insurance~~  
8 ~~shall establish auditable procedures for verifying compliance with~~  
9 ~~this subdivision.~~

10 ~~(8) Every insurer shall provide to a prospective applicant, at the~~  
11 ~~time of solicitation, written notice that the Health Insurance~~  
12 ~~Counseling and Advocacy Program (HICAP) provides health~~  
13 ~~insurance counseling to senior California residents free of charge.~~  
14 ~~Every agent shall provide the name, address, and telephone number~~  
15 ~~of the local HICAP program and the statewide HICAP number,~~  
16 ~~1-800-434-0222.~~

17 ~~(9) Provide a copy of the long-term care insurance shoppers~~  
18 ~~guide developed by the California Department of Aging to each~~  
19 ~~prospective applicant prior to the presentation of an application or~~  
20 ~~enrollment form for insurance.~~

21 ~~(10) Clearly post on its Internet Web site and provide written~~  
22 ~~notice at the time of solicitation that a specimen individual policy~~  
23 ~~form or group master policy and certificate form for each policy~~  
24 ~~form offered in this state is available to a prospective applicant~~  
25 ~~upon request. The individual specimen policy form or group master~~  
26 ~~policy and certificate form shall be provided to a requesting party~~  
27 ~~within 15 calendar days or receipt of a request.~~

28 ~~(11) Clearly post on its Internet Web site, and include on its~~  
29 ~~policy application, information about an Internet Web site provided~~  
30 ~~by the Department of Health Care Services, known as~~  
31 ~~www.rureadyea.org.~~

32 ~~(b) In addition to other unfair trade practices, including those~~  
33 ~~identified in this code, the following acts and practices are~~  
34 ~~prohibited:~~

35 ~~(1) Twisting. Knowingly making any misleading representation~~  
36 ~~or incomplete or fraudulent comparison of any insurance policies~~  
37 ~~or insurers for the purpose of inducing, or tending to induce, any~~  
38 ~~person to lapse, forfeit, surrender, terminate, retain, pledge, assign,~~  
39 ~~borrow on, or convert any insurance policy or to take out a policy~~  
40 ~~of insurance with another insurer.~~

- 1     ~~(2) High pressure tactics. Employing any method of marketing~~  
2     ~~having the effect of or tending to induce the purchase of insurance~~  
3     ~~through force, fright, threat, whether explicit or implied, or undue~~  
4     ~~pressure to purchase or recommend the purchase of insurance.~~
- 5     ~~(3) Cold lead advertising. Making use directly or indirectly of~~  
6     ~~any method of marketing which fails to disclose in a conspicuous~~  
7     ~~manner that a purpose of the method of marketing is solicitation~~  
8     ~~of insurance and that contact will be made by an insurance agent~~  
9     ~~or insurance company.~~

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